

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA      )      NO.  1:CR-00-050-02  
                                      )  
                                      )  
v.                                 )      (Judge Caldwell)  
                                      )  
KENNETH O. SIMMONS,            )  
                                      )      (ELECTRONICALLY FILED)  
                                      )  
Defendant.                      )

**GOVERNMENT'S RESPONSE TO MOTION FOR RELIEF PURSUANT  
TO TITLE 18 UNITED STATES CODE SECTION 3582(c)**

AND NOW comes the United States of America, by its undersigned counsel and submits the following Response to the Defendant's Motion for Relief pursuant to Title 18 United States Code, Section 3582(c), setting forth the following material factors in support thereof:

1.      The defendant was previously convicted and sentenced for offenses involving the distribution of cocaine base, also known as crack cocaine.
2.      The defendant was originally sentenced to a term of 360 months' imprisonment, a sentence which represented the low end of the guidelines imprisonment range which the Court found to be applicable in this case, 360 months to life imprisonment. That guidelines imprisonment range was based upon the Court's finding that the defendant's offense level was 38 and the defendant's criminal history category was V.

3. Following imposition of this sentence, in December 2007, the United States Sentencing Commission enacted an amendment to the sentencing guidelines, Amendment 706, which reduced the guidelines offense level for drug distribution and conspiracy offenses involving cocaine base by two offense levels and further provided that this amendment applied retroactively to defendants who were sentenced before the effective date of this amended guideline.

4. The defendant has now moved pursuant to Title 18, United States Code, Section 3582(c), for relief in accordance with this amended guidelines provision.

5. Upon review of the defendant's motion and the underlying facts of this case, the United States has determined that the defendant is not entitled to relief pursuant to Title 18, United States Code, Section 3582(c) since:

- A. The defendant was convicted and sentenced for drug trafficking involving cocaine base;
- B. The defendant's guidelines imprisonment range and sentence were determined based upon the quantity of drugs involved in this offense; and
- C. The defendant is a Career Offender, having convictions for cocaine trafficking and burglary. He therefore, is not eligible for a recalculation of his guidelines under Amendment 706.

Wherefore, since the defendant is a career offender, the United States requests this Court to deny the defendant's Motion for Relieve.

Respectfully submitted,

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Dated: February 28, 2008

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 28th day of February, 2008, she served a copy of the attached

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via electronic case filing and/or by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

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/s/ Carol A. Manies  
CAROL A. MANIES  
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